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Plan Administrator*

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

In Re:	:	
MIN SIK KANG	:	
MAN SUN KANG	:	Case No. 10-18839-BFK Chapter 11
Debtors.	:	
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RAYMOND A. YANCEY, Chapter 11	:	
Trustee for Bankruptcy Estates of Min	:	
Sik Kang and Man Sun Kang,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 16-01005-BFK
MIN SIK KANG, et al.,	:	
Defendants.	:	
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CONSENT MOTION FOR ORDER MODIFYING JUDGMENT
(Yancey v. Kang, et. al., Ad. Pro. 16-01005-BFK)

Raymond A. Yancey, in his capacity as the Plan Administrator (the “Plan Administrator”) for the Liquidation Trust established pursuant to the Revised First Amended Plan of Liquidation of the Estates of Min Sik Kang and Man Sun Kang (the “Liquidation Trust”)

in the above-styled bankruptcy case, by and through undersigned counsel, hereby files this *Motion for Order Modifying Judgment* (the “Motion”) seeking to modify the judgment entered against Sue Kang Kim, Steve Kim, and Young Nam Kang, from \$2,500.000 to \$1,500.000. The Plan Administrator does not seek to modify either the judgment in the amount of \$11,000,000 rendered against Min Sik Kang and Man Sun Kang or to modify the judgment in the amount of \$91,731.50 rendered against Sue Kang Kim and Steve Kim. In support thereof, the Plan Administrator states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue lies properly in this Court pursuant to 28 U.S.C. § 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

2. The relief sought by this Motion is predicated upon Section 105(a) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

3. On October 19, 2010 (the “Kang Petition Date”), Mr. Kang and Mrs. Kang commenced a bankruptcy case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the Bankruptcy Court.

4. On October 19, 2010, MS Grand commenced a bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maryland, which subsequently entered an order transferring venue of the case to the United States Bankruptcy Court for the Eastern District of Virginia.

5. On February 17, 2011, the Bankruptcy Court entered an order providing for the joint administration of the bankruptcy cases filed by Mr. and Mrs. Kang and MS Grand. (collectively, the “Bankruptcy Cases”).

6. On January 7, 2013, the Bankruptcy Court entered an order directing the United States Trustee to appoint a Chapter 11 trustee for debtors in the Bankruptcy Cases. On January 7, 2013, the United States Trustee appointed Raymond A. Yancey as Trustee. On January 17, 2013, the Bankruptcy Court entered its order confirming such appointment.

7. On April 19, 2013, the Bankruptcy Court entered an order converting the MS Grand Case to Chapter 7. Mr. and Mrs. Kang’s bankruptcy case is no longer jointly administered with MS Grand’s bankruptcy case.

8. The Plan Administrator in his capacity as Chapter 11 Trustee filed his initial Chapter 11 plan on April 17, 2015 [Dkt. No. 1448], which plan was subsequently amended (as amended, the “Plan”). The Plan was confirmed at the hearing on March 22, 2016 [Dkt. No. 1530].

9. Pursuant to the Plan, which became effective on April 25, 2016 (the “Effective Date”), the assets of Mr. and Mrs. Kang’s bankruptcy estates were transferred to the Liquidation Trust. The Trust Agreement grants the Plan Administrator the authority to settle the estates’ claims without further Court order.

10. The Plan Administrator filed this adversary proceeding against the above referenced Defendants and another co-defendant, Yong Jin Jung (“YJJ”), on January 11, 2016. YJJ did not respond to the Complaint, and the Court entered a default judgment against him on April 26, 2016. Following completion of discovery, the parties filed a motion for referral to a mediator. [Dkt. No. 320]

11. On December 4, 2017 and December 7, 2017, the parties met for in person mediation sessions with The Hon. Judge Stephen S. Mitchell who was appointed by this Court to mediate this adversary proceeding. At the close of the December 7, 2017 session, the parties had not reached a settlement agreement but they had exchanged settlement proposals and agreed to continue to work on settlement. During the month of December, the parties continued to negotiate the terms of a settlement by exchanging numerous proposals and counter-proposals, and engaging in attorney negotiations.

12. On December 29, 2017, the parties reached a final settlement agreement in principle, with a two-page term sheet acknowledged and agreed to by all parties (other than YJJ).

13. Pursuant to the terms of the Settlement Agreement, on January 25, 2018, this Court entered a consent Judgment order by which judgment was granted in favor of the Plan Administrator in the amount of \$11,000,000 against Min Sik Kang and Man Sun Kang, and in the amount of \$2,500,000, jointly and severally against Sue Kang Kim, Steve Kim and Young Nam Kang and \$91,731.50 against Sue Kang Kim and Steve Kim.

14. The Settlement Agreement provides for the reduction of the \$2,500,000 judgment entered against Sue Kang Kim, Steve Kim and Young Nam Kang to \$1,500,000 provided that the Pan Administrator receives the Second Settlement Payment (defined in the Settlement Agreement) of \$150,000 on or before December 31, 2019.

15. The Plan Administrator received the Second Settlement Payment prior to December 31, 2019. Accordingly, pursuant to the Settlement Agreement the \$2,500,000 judgment should be reduced to \$1,500,000.

RELIEF REQUESTED

16. By this Motion, the Plan Administrator seeks the entry of an Order modifying the Consent Judgment Order to reduce the amount of the \$2,500,000 judgment against Sue Kang Kim, Steve Kim and Young Nam Kang from \$2,500,000 to \$1,500,000, jointly and severally.

17. The Plan Administrator does not seek to modify either the \$11,000,000 judgment rendered against Min Sik Kang and Man Sun Kang or the \$91,731.50 judgment rendered against Sue Kang Kim and Steve Kim pursuant to the Consent Judgment Order.

18. Sue Kang Kim and Steve Kim have consented to this Motion as evidenced by the Consent Modified Judgment Order that accompanies this Motion.

WHEREFORE, the Plan Administrator requests that this Court enter an order (1) reducing the amount of the \$2,500,000 judgment against Sue Kang Kim, Steve Kim and Young Nam Kang from \$2,500,000 to \$1,500,000; and (2) granting such other relief as is just and appropriate under the circumstances.

Dated: January 9, 2020

Respectfully submitted,

/s/ Jeffrey L. Tarkenton
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*Counsel to Raymond A. Yancey,
as Plan Administrator*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January, 2020, I caused a copy of the foregoing Consent Motion for Order Modifying Judgment to be served via the Court's CM/ECF system.

/s/ Jeffrey L. Tarkenton
Jeffrey L. Tarkenton